

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GREGORY BALZ,

Plaintiff,

v.

KILOLO KIJAKAZI, *Acting Commissioner
of Social Security*,

Defendant.

No. 20-CV-7729 (KMK)

ORDER ADOPTING REPORT &
RECOMMENDATION

Appearances:

Richard Blake Seelig, Esq.
Seelig Law Offices, LLC
New York, NY
Counsel for Plaintiff

Christopher N. Hurd, Esq.
Social Security Administration, Office of the General Counsel
Baltimore, MD
Counsel for Defendant

Rebecca Hope Estelle, Esq.
Catherine Louise Zurbrugg, Esq.
Social Security Administration, Office of the General Counsel
New York, NY
Counsel for Defendant

KENNETH M. KARAS, United States District Judge:

Plaintiff Gregory Balz (“Plaintiff”) brought this action pursuant to 42 U.S.C. § 405(g), seeking judicial review of the final decision of the Commissioner of Social Security (the “Commissioner” or “Defendant”) denying his application for Social Security Disability (“SSD”)

benefits. (*See* Compl. ¶ 1 (Dkt. No. 1).)¹ Before the Court is Plaintiff’s Motion for Attorneys’ Fees under 42 U.S.C. § 406(b). (*See* Not. of Mot. (Dkt. No. 36).)

Plaintiff applied for SSD benefits on December 28, 2018, alleging onset of disability beginning March 31, 2024. (Compl. ¶¶ 1, 6.) On February, 12, 2020, Administrative Law Judge (“ALJ”) Vincent Cascio issued a written decision concluding that Plaintiff was not disabled within the meaning of the Social Security Act. (SSA Admin. Record at 10–26 (Dkt. No. 18).)² That decision became final on July 21, 2020, when the Appeals Council denied Plaintiff’s request for review. (*Id.* at 5–7.)

Plaintiff commenced this Action on September 18, 2020, (*see* Compl.) after which the Parties filed cross motions for judgment on the pleadings, (Dkt. Nos. 19, 24). On January 25, 2022, the Honorable Paul E. Davison issued a Report and Recommendation concluding that the Court should grant Plaintiff’s motion. (Dkt. No. 27.) The Court adopted that R&R in full, reversed ALJ Cascio’s decision, and remanded for further proceedings. (*See* Order (Dkt. No. 31).) Because Plaintiff prevailed in his appeal, the Court also awarded \$11,200 in attorneys’ fees under the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412. (*See* Stip & Order for Allowance of Fees (Dkt. No. 34).)

On remand, the Commissioner approved Plaintiff for SSD benefits and issued a Notice of Award informing Plaintiff that his past-due benefits totaled \$152,114. (Decl. of Richard Seelig in Supp. of Mot. (“Seelig Decl.”) Ex. B (Not. of Reward) at 4, 9 (Dkt. No. 38-2).) The Commissioner withheld \$38,028.50—25% of the total award—for attorneys’ fees. (*Id.*) On

¹ As Judge Reznik’s Report and Recommendation noted, Kilolo Kijakazi is now the Acting Commissioner of Social Security and was substituted for former Commissioner Andrew Saul as the Defendant in this Action, pursuant to Federal Rule of Civil Procedure 25(d).

² Cites to the Administrative Record use ECF pagination.

November 2, 2023, Plaintiff's counsel filed the instant Motion, seeking to recover the withheld funds. (*See* Pl's Mem. of Law in Supp. of Mot. (Dkt. No. 37).)

On December 15, 2023, the Honorable Victoria Reznik issued a Report and Recommendation (the "R&R") recommending that this Court grant Plaintiff's Motion. (Dkt. No. 41.)³ Judge Reznik also recommended that counsel for Plaintiff be directed to refund the previously awarded \$11,200 in attorneys' fees directly to Plaintiff. Defendant has not filed any objections to the R&R. (*See generally* Dkt.)⁴

When no objections are filed, the Court reviews a R&R for clear error. *See Muniz v. Comm'r of Soc. Sec.*, No. 18-CV-8295, 2021 WL 293381, at *1 (S.D.N.Y. Jan. 28, 2021); *Andrews v. LeClaire*, 709 F. Supp. 2d 269, 271 (S.D.N.Y. 2010) (same). The Court has reviewed the R&R and the Motion for Attorneys' Fees, and finding no substantive error, clear or otherwise, adopts the R&R.

Accordingly, it is hereby

ORDERED that the Report and Recommendation, dated December 15, 2023, is ADOPTED in its entirety.

ORDERED that Plaintiff's Motion is GRANTED.

ORDERED that counsel for Plaintiff be directed to refund the previously awarded \$11,200.00 in attorneys' fees, under the EAJA, directly to Plaintiff.

ORDERED that the Clerk of the Court is respectfully directed to close this case.

³ This Action was redesignated to Judge Reznik on November 14, 2023. (*See* Dkt. (Notice of Redesignation).)

⁴ Judge Reznik provided notice that, pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 72(b) of the Federal Rules of Civil Procedure, objections to the R&R were due within fourteen days from the receipt of the R&R and that failure to file timely objections would preclude later appellate review of any order of judgment that will be entered. (R&R 8.)

SO ORDERED.

Dated: April 3, 2024
White Plains, New York

A handwritten signature in black ink, appearing to read 'K. Karas', written over a horizontal line.

KENNETH M. KARAS
United States District Judge